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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,920	09/30/2003	Craig T. Baldwin	TAZ-256	2601
26875	7590	10/07/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP			MOORE, KARLA A	
2700 CAREW TOWER			ART UNIT	
441 VINE STREET			PAPER NUMBER	
CINCINNATI, OH 45202			1763	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/674,920

Applicant(s)

BALDWIN ET AL.

Examiner

Karla Moore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 21-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-14 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 4, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1203</u> . | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-20, drawn to a material processing system, classified in class 156, subclass 345.28.
  - II. Claims 21-23, drawn to a method of determining the presence or absence of a plasma in a plasma processing space within a semiconductor processing system, classified in class 216, subclass 67.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process, such as processing an optical device.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Joseph Jordan on September 6, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21-23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-3, 5-14 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2001/0051437 A1 to Cruse.

9. Cruse discloses a material processing system substantially as claimed and comprising: a processing tool, a test signal source (paragraph 27) providing a first test signal and a second test signal; a filter/detector (122) for determining an intermodulation product of the first test signal and the first test signal (see paragraphs 33 and 37); and a controller (paragraph 20) coupled to the filter/detector and the processing tool for determining characteristics of processing within the chamber.

10. With respect to claims 2 and 3, which are drawn to specific signals created during processing which would be directly dependent on the intended processing, the courts have ruled that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

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11. With respect to claim 5, Cruse also teach that a RF bias source (108 or 112) may also provide a signal and that a RF subsystem (110) is coupled to the RF bias source, and the test signal sources (via the processing chamber), wherein the RF subsystem comprises means for combining the first signal, the second signal, and the RF bias signal (by providing the RF bias signal to the controller/analyzer) and means for providing the first signal, the second signal, and the RF bias signal to the process chamber (see paragraph 31).

12. With respect to claim 6, the RF bias signal is used to generate plasma (paragraph 25). With respect to the relation between signals, which would depend on various processing parameters, the courts have ruled that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

13. With respect to claim 7, Cruse teaches that the filter/detector may be configured in various ways depending on the parameters to be detected (paragraph 27).

14. With respect to claims 8-10, the product of the signals are directly related to the signals and therefore dependent on the intended processing, the courts have ruled that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

15. With respect to claims 11-14, the filter detector further comprises a power source (128) coupled to at least the filter (paragraph 30). The power source is connected to computer that would be capable comprising software for conversion of signals (also see Figure 1). The controller comprises at least one of a microprocessor, a microcontroller, a timer, a digital signal processor, memory, receiver, A/D converter and D/A converter (again see paragraph 30 and Figure 1).

16. With respect to claim 17, the test signal source further comprises a power source coupled to at least one of the detector/filter or an antenna. The RF power supply and the chuck power supply are both coupled to the detector/filter through the chamber (see Figure 1).

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17. With respect to claim 18, while neither of the RF power supply and the chuck power supply are explicitly taught as capable of converting signals, each is connected through the system to a computer (Figure 1, inside 122) capable of comprising conversion software which it would be obvious to one of ordinary skill in the art to use for conversion purposes.

18. With respect to claim 19 and 20, the test signal source further comprises a controller (110) coupled to at least one of the filter/detector and an antenna. The controller comprises at least one of a microprocessor, a microcontroller, a timer, a digital signal processor, memory, receiver, A/D converter and D/A converter (see paragraph 30 and Figure 1).

#### ***Allowable Subject Matter***

19. Claim 4 and 15-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach or fairly suggest a material processing tool as recited in claim 1, further comprising a summing circuit and an isolation amplifier.

#### ***Conclusion***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 5025135; 5175472; 5458732; 5467013; 5691642; 20010051437 A1; Pub 20020135378; and Pub 20040004708 each plasma control apparatus and processes, as do JP 01226153, EP 0 568 920 A1 and EP App 0 458 324 A2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karla Moore whose telephone number is 571.272.1440. The examiner can normally be reached on Monday-Friday, 9:00 am-6:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on 571.272.1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karla Moore  
Patent Examiner  
Art Unit 1763  
3 October 2005